

REMARKS

The foregoing amendments and the following remarks are responsive to the May 2, 2008 Office Action (the "Office Action").

Prosecution History:

In Applicant's reply dated July 27, 2007, Applicant, inter alia, elected with traverse Claims 1-31 for further prosecution. By this present Amendment, new dependent Claims 66-68 are added, the new claims being directed to Group I that was elected on July 27, 2007. Applicant submits that no new matter is being introduced by this amendment, and that Claims 66-68 are allowable for at least the same reasons as for the claim or claims from which they depend (as described below) and also because they each recite further patentable distinctions.

Additionally, Applicant notes that several of the withdrawn claims have been amended in a manner that is consistent with the amendments to the elected claims so that, if the elected claims are allowed, the withdrawn claims can be reinstated and overcome the rejections stated in the Office Action.

Claim Rejections:

While Applicant respectfully disagrees with the Examiner's rejections, to advance prosecution, Applicant has amended one or more claims to address the Examiner's comments. Applicant is not acquiescing to the rejections and reserves the right to pursue in a related application claims at least as broad as the amended claims prior to the amendments set forth herein. Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

Claim Rejections – 35 U.S.C. 102 – Claims 1-2, 4-5, 24, 26, 29, 53-57, 59, and 63-65:

The Examiner rejected Claims 1-2, 4-5, 24, 26, 29, 53-57, 59, and 63-65 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2003/0108587 ("Orgill"). Respectfully stated, none of Claims 1-2, 4-5, 24, 26, 29, 53-57, 59, and 63-65 is anticipated by Orgill under 35 U.S.C. 102(e) because Orgill does not show every element of each claim

arranged as in each claim. *See* MPEP §2131. Moreover, as discussed below, Orgill also does not render obvious any of these claims.

Independent Claims 1, 5 and 53

As discussed during the interview, Applicant has amended Claims 1, 5, and 53 to distinctly point out the distinctions between the inventions set forth in Claims 1, 5, and 53 and the apparatuses disclosed in Orgill.

In particular, regarding Claim 1, Applicant has amended Claim 1 to distinctly point out that the absorbable matrix comprises a first absorbable portion formed from a first material having a first rate of absorption of tissue into the first absorbable portion and a second absorbable portion formed from a second material having a second rate of absorption of tissue into the second absorbable portion, the first rate of absorption being different than the second rate of absorption.

Regarding Claim 5, Applicant has amended Claim 5 to distinctly point out that the absorbable matrix of the appliance comprises a plurality of layers with at least a lower layer and a higher layer, wherein the lower layer is formed from a first material having a first rate of absorption of tissue into the first material, the higher layer is formed from a second material having a second rate of absorption of tissue into the second material, and the first rate of absorption is higher than the second rate of absorption.

Regarding Claim 53, Applicant has amended Claim 53 to distinctly point out that the first absorbable matrix of the appliance is formed from a first material having a first rate of absorption of tissue into the first absorbable matrix and the second absorbable matrix of the appliance is formed from a second material having a second rate of absorption of the tissue into the second absorbable matrix, the first rate of absorption being different than the second rate of absorption.

Applicant also submits that Claims 1, 5, and 53 would not be obvious in view of Orgill and, further, that dependent Claims 2, 4, 54-57, 59, and 65 are not anticipated or suggested by, or obvious in view of Orgill for at least the same reasons as for the claim or claims from which they depend, and also because they each recite further patentable distinctions.

For example, regarding Claim 4, Orgill does not disclose or suggest a cover comprising a temperature-sensitive material configured such that a user or practitioner can monitor the temperature at the site of the wound by monitoring the appearance of the cover. (underlining

added). With reference to paragraph 94 of Orgill, feature 170 (called a "sensor array") is a "multi-sensor designed to monitor the microenvironment of the wound bed 100." As additionally stated in paragraph 94, "the sensor 170 array can be placed at any point in the wound 100 ..." (underlining added). Therefore, as described in paragraph 94 and illustrated in Figure 10A, Orgill's sensor array 170 is not part of Orgill's occlusive dressing 115, as would be required to anticipate Claims 4 and 26. Rather, as described in paragraph 94 and illustrated in Figure 10A, Orgill's sensor array 170 is completely separate from the occlusive dressing 115.

Independent Claim 24

Additionally, as discussed during the interview, Applicant has amended Claim 24 to clarify the distinctions between the inventions set forth in Claim 24 and the apparatuses disclosed in Orgill. In particular, Applicant has amended Claim 24 to distinctly point out that, inter alia, unlike the apparatus disclosed in Orgill, the temperature monitor of Claim 24 is supported positioned within the periphery of the cover.

Regarding Applicant's amended Claim 24, Applicant submits that Orgill does not disclose or suggest an appliance comprising a cover and a temperature monitor supported by the cover and positioned within a periphery of the cover, wherein the temperature monitor is configured to provide a visual indication of the temperature of the wound such that a visual inspection of the appearance of the temperature monitor provides an indication of the temperature of the wound. There are at least two distinct differences between the appliance set forth in Claim 24 and Orgill's embodiment described at paragraph 94 and illustrated in Figure 10A.

First, Orgill does not disclose or suggest that the wound sensor array 170 (which the Office Action compares to the temperature monitor of Claim 24) provides a visual indication of the temperature of the wound such that a visual inspection of the appearance of the wound sensor array 170 provides an indication of the temperature of the wound. Rather, as set forth in paragraph 94, the "sensor probes 175 are entrained in the matrix 105 and fed through the occlusive dressing 115 to a sensor output 180." Importantly, "[t]his sensor output 180 provides valuable information about the wound microenvironment ..." (underlining added). This disclosure makes it indisputably clear that Orgill's sensor array 170 does not itself provide a visual indication of the temperature of the wound such that a visual inspection of the appearance

of the [sensor array 170] provide an indication of the temperature of the wound, as set forth in Claim 1. Second, the wound sensor array in Orgill is placed in the wound itself, and is not supported by Orgill's dressing 115.

Applicant notes that the Examiner may wish to rely on a combination of Orgill with U.S. Patent Application No. 2003/0014025 ("Allen"), as applied to Claims 27 and 28, to reject amended Claim 24. As discussed below with respect to Claims 27 and 28, Applicant submits that a combination of Orgill with Allen to make an obviousness rejection would be improper.

Additionally, regarding dependent Claims 63 and 64, respectfully stated, these claims are not anticipated or suggested by Orgill for at least the same reasons as for Claim 24 from which Claims 63 and 64 depend, and also because Claims 63 and 64 each recite further patentable distinctions. In particular, regarding Claim 64, for the same reasons as discussed above with respect to Claim 24, Orgill does not disclose a wound cover having, inter alia, a temperature monitor integral with the cover. In particular, respectfully stated, Orgill's feature 180 is not a temperature-sensitive material as stated in the Office Action. Rather, as described in paragraph 94, feature 180 is a "sensor output" that is, pursuant to every reasonable interpretation of paragraph 94 an Figure 10A, located outside of the wound bed. This conclusion is made inescapable by Orgill's statement in paragraph 94 that the "sensor probes 175 are ... fed through the occlusive dressing 115 to a sensor output 180." (underlining added). Therefore, neither Orgill's sensor probes 175 nor Orgill's sensor output 180 are disclosed or suggested as being integral with Orgill's occlusive dressing 115.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claims 1-2, 4-5, 24, 26, 29, 53-57, 59, and 63-65 in view of the amendments and clarifications listed above.

Claim Rejections – 35 U.S.C. 102 - Claims 6, 8-11, 14, 16-21, and 61-62:

The Examiner rejected Claims 6, 8-11, 14, 16-21 and 61-61 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2003/0050594 ("Zamierowski"). Respectfully stated, Claims 6, 8-11, 14, and 16-21 are not anticipated by Zamierowski under 35 U.S.C. 102(e) because Zamierowski does not show every element of each claim arranged as in each claim. *See*

MPEP §2131. Moreover, as discussed below Zamierowski also does not render obvious any of these claims.

Regarding Applicant's amended Claim 6, respectfully stated, Zamierowski does not disclose or suggest an appliance for monitoring pressure during treatment of any body part of a patient comprising a cover having a plurality of protrusions configured to monitor the level of the pressure at the site of the body part being treated.

By contrast, Zamierowski's paragraph 54 and Figure 5a describe a "bellows-type tubing section 110a." The bellows-type tubing section 110a is never disclosed or suggested by Zamierowski as being configured to monitor the level of pressure under Zamierowski's wound dressing 102, nor does Zamierowski disclose a plurality of bellows or protrusions.

Paragraph 59 states that, [i]n operation, evacuating the dressing 202 causes portions of it to shrink, compress and collapse under the pressure gradient, thus providing a visual indication of its performance." There are three points of distinction between this description set forth in paragraph 59 and the invention set forth in Claim 6.

- First, Zamierowski's paragraph 59 does not disclose or suggest that the dressing 202 comprises a plurality of protrusions supported by the dressing, as set forth in amended Claim 6.
- Further, importantly, Zamierowski's does not disclose or suggest in paragraph 59 or otherwise that the dressing 202 monitors the level of pressure at the site of the body part being treated. Paragraph 59 merely discloses that the performance (to be distinguished from the level of pressure) of the dressing 202 can be visually indicated.
- Finally, Applicant's Claim 6 states that the protrusions supported by the cover are configured to monitor the level of pressure, whereas Zamierowski's paragraph 59 states that the dressing 202 (as opposed to some other feature supported by the dressing) provides a visual indication of the dressing's performance.

Regarding Applicant's amended Claim 14, Applicant submits that Claim 14 is allowable over Zamierowski for reasons similar to those stated above with respect to Claim 6. Zamierowski does not disclose or suggest an appliance comprising a cover and a pressure monitor supported by the cover, wherein the pressure monitor is configured to provide a visual indication of the level of reduced pressure between the cover and the wound such that a visual inspection of the appearance of the pressure monitor provides an indication of the level of

reduced pressure between the cover and the wound. Similar to Claim 6, Claim 14 makes clear that it is the visual inspection of the pressure monitor supported by the cover, as opposed to the cover, that provides the visual indication of the level of reduced pressure between the cover and the wound. Zameiowski does not disclose or suggest any features the same as or similar to the pressure monitor.

Regarding Claims 8-11, 16-21, and 61-62, respectfully stated, these claims are not anticipated or suggested by Zamierowski for at least the same reasons as for the claim or claims from which they depend, and also because they each recite further patentable distinctions. In particular, regarding Claim 17, Zamierowski's paragraph 53 states that the feature 106 is a collector assembly. Zamierowski does not disclose or suggest the appliance of Claim 14, further comprising an absorbable matrix adapted to encourage growth of tissue in the area of the wound into the matrix.

Accordingly, Applicant respectfully requests that Examiner reconsider and withdraw the rejection of Claims 6, 8-11, 14, 16-21, and 61-62 in view of the amendments and clarifications listed above.

Claim Rejections – 35 U.S.C. 103

The Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* ("Examination Guidelines"), which were published in the Federal Register Vol. 72, No. 195 (Docket PTO-P-2007-0031) on October 10, 2007, clarify the Supreme Court's decision on *KSR Int'l. v. Teleflex, Inc.* with regard to the issue of obviousness under 35 U.S.C. §103(a) in relation to prior art. *KSR Int'l. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007). Applicant submits that the outstanding Office Action again fails to satisfy the Examiner's burden in establishing an obviousness rejection.

Under the Examination Guidelines, and as reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.* Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;

- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

The Examination Guidelines confirms the role of Patent Office personnel as factfinders:

When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

72 Fed. Reg. 57527 (Oct. 10, 2007).

The Examination Guidelines further provide that “[o]nce the Graham factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.” *Id.* “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* at 57528-57529 (internal citations omitted). Under the Examination Guidelines, a rejection must offer specific support for the following rationales Examiners may use to show obviousness:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Id. at 57529.

For example, in order to reject a claim on rationale (G) above, Office personnel must first resolve the Graham factual inquiries, and then must articulate the following:

- (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- (2) a finding that there was reasonable expectation of success; and
- (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

Id. at 57534. The rationale to support a conclusion that the claim would have been obvious is that “a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and that there would have been a reasonable expectation of success.” *Id.* If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. *Id.* An explicit suggestion to combine the prior art is not necessary, but “[i]n such situations, the proper question is whether the ordinary artisan possess knowledge and skills rendering him capable of combining the prior art references.” *Id.* (internal citations omitted).

The November 1, 2007 and May 2, 2008 Office Actions fail to set forth the level of ordinary skill in the pertinent art, or who qualifies as one of ordinary skill in the field. Applicant submits that without such a finding, the Examiner’s combinations are improper, as the Examiner has not established that the references proposed by the combinations would be known to one of ordinary skill in the art, nor that one of ordinary skill would have the requisite knowledge and ability to make the desired combinations. Moreover, the Examiner has failed to articulate specific rationales for the proposed combinations of references, and has failed to provide explicit explanations supporting the obviousness rejections. Rather, the Examiner makes merely conclusory statements regarding the combinability of the cited prior art references, without identifying the knowledge one skilled in the art would possess, what modifications the skilled person would need to make to combine the prior art references, and whether that skilled person would have a reasonable expectation of success. Accordingly, Applicant submits that the Examiner’s obviousness rejections are improper. More specific details relating to these missing inquiries and missing articulated findings are discussed below with respect to particular

rejections, along with Applicant's reasoned statements explaining why Applicant's claims are nonobvious over the cited art.

Claims 3 and 25:

The Examiner rejected Claims 3 and 25 under 35 U.S.C. 103(a) as being unpatentable over Orgill in view of U.S. Patent Application Publication No. 2002/0065494 ("Lockwood"). Respectfully stated, Claims 3 and 25 are not unpatentable over Orgill in view of Lockwood because Lockwood does not overcome Orgill's failure to disclose or suggest all of the limitations set forth in the claims from which Claims 3 and 25 depend (described above), and because the additional patentable limitations set forth in Claims 3 and 25 and the limitations of the claims from which they depend would not have been obvious to one of ordinary skill in the art in view of Orgill and Lockwood at the time of the inventions.

Claims 27-28 and 60:

The Examiner rejected Claims 27-28 and 60 under 35 U.S.C. 103(a) as being unpatentable over Orgill in view of U.S. Patent Application No. 2003/0014025 ("Allen"). Applicant asserts that: (i) that Orgill and Allen are not properly combinable; (ii) that one skilled in the art would not have combined Orgill with Allen, and the Examiner has not articulated a proper rationale why one skilled in the art would have combined the prior art elements in the manner claimed by the Applicant; and (iii) that the combination of Orgill and Allen does not result in Applicant's invention set forth in those claims. In particular, Applicant respectfully submits that the Examiner cannot rely on the Allen reference under 35 U.S.C. 103 because the Allen reference is not analogous prior art (*see* MPEP § 2141.01(a)) and that this combination does not result in Applicant's inventions even if properly combined.

Orgill and Allen Are Not Properly Combinable

As discussed during the interview, Applicant submits that Allen is not analogous prior art and therefore cannot be combined with Orgill in any manner for a rejection under 35 U.S.C. 103. According to MPEP § 2141.01(a), a reference "must" be analogous to be relied on in a rejection under 35 U.S.C. 103. Applicant submits that Allen is not analogous because, inter alia, there are functional differences between Allen's absorbent article and Orgill's apparatuses that cannot be resolved and that would frustrate the purpose of Orgill's apparatuses. *See* MPEP § 2141.01(a)(II), citing *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973),

("[w]hile Patent Office classification of references and the cross-references in the official search notes of the class definitions are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the inventions to carry far greater weight.") (underlining added)).

Applicant submits that the *functionality* of Allen's absorbent article would frustrate the drainage aspect of Orgill's embodiments. Allen is directed to an absorbent article, while Orgill emphasizes drainage of wound exudate, stating that "[c]urrent methods for improving wound healing emphasize effective drainage, ..." (Orgill, ¶ [003]) (underlining added). Additionally, according to Orgill, the embodiment shown in Figure 9 has an in-flow system for delivery of fluids and an outflow system for the removal of fluids. Allen's absorbent article would impede the fluid inflow and outflow system described with respect to Orgill's Figure 9, and would also appear to impede wound healing. Therefore, for these reasons, Applicant submits that Allen and Orgill are not analogous art and are not properly combinable for a rejection under 35 U.S.C. 103. Moreover, even if they were analogous art, Applicant submits that one skilled in the art would not look to Allen to modify Orgill's apparatus because, *inter alia*, Allen's absorbent article would frustrate the function of Orgill's apparatus.

One Skilled In The Art Would Not Have Combined Orgill With Allen

The Examiner has made no factual findings that, in addition to the concerns listed above, one skilled in the art of reduced pressure wound therapy would have knowledge of the Allen devices and methods relating to wearable and absorbent articles having a fever indicator. Applicant submits that it would be beyond the knowledge of one skilled in the relevant art (reduced pressure wound therapy) to utilize the teachings of Allen, which is in a different field of endeavor than Orgill, and modify them to produce Applicant's claimed invention with any reasonable expectation of success. Applicant also submits that there would have been no reasonable expectation of success in making the proposed combination in view of the fact that extensive modifications would have been needed to be made to Allen's absorbable bandage in order for the proposed combination to be operable.

For example, with regard to Claim 24 (from which Claims 27 and 28 depend) and Claim 1 (from which Claim 60 depends), Orgill teaches an occlusive dressing that covers, *inter alia*, a wound and a biodegradable matrix (*see* Orgill, ¶ 33-34). One skilled in the art would not

understand from Allen or his or her own knowledge how to modify Orgill in an operable way to provide an appliance for administering a reduced pressure treatment to a wound comprising, inter alia, a cover and a temperature monitor supported by the cover wherein the temperature monitor is configured to provide a visual indication of the temperature of the wound such that the visual inspection of the appearance of the temperature monitor provides an indication of the temperature of the wound. The reduced pressure wound therapy environment is much different from the wearable and absorbent article environment, and it goes beyond a mere combination of known elements to produce the claimed invention. Moreover, for the reasons stated above, one skilled in the art would similarly not understand from Allen (or his or her own knowledge) how to modify the occlusive dressing in Orgill to support such a wearable or absorbent article in an operable way.

With regard to Claim 27, for the reasons stated above, one skilled in the art would not understand from Allen or his or her own knowledge how to modify Orgill in an operable way to provide a reduced pressure treatment appliance comprising, inter alia, a cover, a temperature monitor comprising one or more layers of temperature-sensitive material located between the cover and the wound, wherein one of the one or more layers of temperature-sensitive material is configured to change from one color to another color or from one shade to another shade of the same color as the temperature of the wound changes.

Similarly, with regard to Claim 28, one skilled in the art would not understand from Allen or his or her own knowledge how to modify Orgill in an operable way to provide the reduced pressure treatment appliance of Claim 28 wherein the temperature-sensitive material is attached to a surface of the cover so that the cover and the temperature-sensitive material comprise a single integrated unit. Again, the reduced pressure wound therapy environment is much different from the wearable and absorbent article environment, and it goes beyond a mere combination of known elements to produce the claimed invention.

Similarly, with regard to Claim 60, one skilled in the art would not understand from Allen or his or her own knowledge how to modify Orgill in an operable way to provide the reduced pressure treatment appliance of Claim 1 wherein the cover comprises a material supported by the cover that is configured to change appearance when the temperature at the site of the wound changes. Again, the reduced pressure wound therapy environment is much different from the

wearable and absorbent article environment, and it goes beyond a mere combination of known elements to produce the claimed invention.

For these reasons, Applicant submits that the Examiner's obviousness rejection over Orgill and Allen is improper, and the rejections of the claims based on this combination be withdrawn.

The Combination of Orgill and Allen Do Not Result in Applicant's Invention

Moreover, for many of the same reasons as discussed above, Applicant submits that the combination of Allen and Orgill suggested by the Examiner would not result in Applicant's claimed invention set forth in Claims 24, 27, 28 and 60.

In relevant part, without limitation, amended Claim 24 is directed to an appliance for administering a reduced pressure treatment to a wound, comprising inter alia a cover and a temperature monitor supported by the cover configured to provide a visual indication of the temperature of the wound such that a visual inspection of the appearance of the temperature monitor provides an indication of the temperature of the wound. (underlining added).

The Office Action states that Allen's temperature change material may be used as a bandage and that it would have been obvious to one of ordinary skill in the art to provide the temperature sensor of Orgill with a temperature change material that changes color, as taught by Allen, to allow a user to visually detect the change in temperature.

First, in contrast with Claim 24, because Orgill does not disclose or suggest that the temperature sensors are supported by Orgill's dressing, substituting Orgill's temperature sensors with Allen's bandage does not result in a temperature monitor supported by the cover, as set forth in amended Claim 24. In particular, Orgill's paragraph 0094 states that the "multisensor 170 can be placed through the biodegradable matrix 105 into the wound 100 itself []," that the "sensor 170 array can be placed at any point in the wound 100 []," and that the "disparate sensor probes 175 are entrained in the matrix 105 and fed through the occlusive dressing 115 to a sensor output 180." (underlining added). Orgill's Figure 10A is consistent with this description in describing that the sensors are located within the wound itself and not supported by Orgill's dressing. Therefore, even assuming arguendo that one skilled in the art would look to combine Allen's bandage with Orgill's dressing, with which Applicant disagrees, substituting Allen's bandage

with Orgill's sensors would not result in Applicant's invention set forth in Claims 24, 27, 28, or 60.

Moreover, because Allen discloses an absorbable bandage, the only functionally appropriate position for Allen's bandage is in the wound bed. Thus, at best, for functionality reasons related to both Allen's absorbable bandage and Orgill's dressing, Allen's bandage would be applied to the wound itself and would not be applied to Orgill's dressing. Therefore, Applicant submits that the proposed combination of Orgill and Allen would not disclose, teach, or suggest Applicant's inventions set forth in Claims 24, 27, 28, or 60. Applicant also submits that one of ordinary skill in the art would not find it obvious to try the combination of Allen with Orgill with any reasonable expectation of success. Because Allen's absorbent article provides a determination of body temperature after being placed in contact with bodily exudates, supporting Allen's absorbent article by Orgill's dressing would likely impede the ability of Allen's fever indicator to function properly.

Further, regarding the appliance of Claim 28, the temperature-sensitive material is attached to a surface of the cover so that the cover and the temperature-sensitive material comprise a single integrated unit. For at least the reasons stated above, the Office Action fails to establish how one skilled in the art could modify Orgill's dressing to support Allen's bandage so that Orgill's dressing and Allen's bandage form a single integrated unit, as set forth in Claim 28 and how such combination would be operative. Applicant submits that it would be beyond the skill of one of ordinary skill in the art to combine Allen's bandage with Orgill's dressing to form a single integrated unit that can function as claimed in Claim 28.

Claims 30 and 31:

The Examiner rejected Claims 30 and 31 under 35 U.S.C. 103(a) as being unpatentable over Orgill in view of U.S. Patent No. 7,004,915 ("Boynton"). Respectfully stated, Claims 30 and 31 are not unpatentable over Orgill in view of Boynton because Boynton does not overcome Orgill's failure to disclose or suggest all of the limitations set forth in the claims from which Claims 30 and 31 depend (described above), and because the additional patentable limitations set forth in Claims 30 and 31 and the limitations of the claims from which they depend would not have been obvious to one of ordinary skill in the art in view of Orgill and Boynton at the time of the inventions. In particular, regarding Claim 30, on Applicant's understanding, Boynton

discloses an alarm that may be automatically activated if an air leak is detected at the wound site (see column 7, lines 30-31). However, neither Orgill nor Boynton disclose or suggest an alarm device that provides an alarm signal when the *temperature* measured by any temperature sensing device exceeds or is lower than a predetermined value.

Claim 58:

The Examiner rejected Claim 58 under 35 U.S.C. 103(a) as being unpatentable over Orgill in view of U.S. Patent No. 7,070,584 ("Johnson"). Respectfully stated, Claim 58 is not unpatentable over Orgill in view of Johnson because Johnson does not overcome Orgill's failure to disclose or suggest all of the limitations set forth in Claim 1 from which Claim 58 depends (described above), and because the additional patentable limitations set forth in Claim 58 and the limitations of Claim 1 would not have been obvious to one of ordinary skill in the art in view of Orgill and Johnson at the time of the inventions. In particular, Johnson does not disclose or suggest an absorbable matrix comprising a first absorbable portion formed from a first material having a first rate of absorption of tissue into the first absorbable portion and a second absorbable portion formed from a second material having a second rate of absorption of tissue into the second absorbable portion, wherein the first rate of absorption is different than the second rate of absorption. Further, regarding the limitations set forth in Claim 58, Johnson's claim 11 specifically states that "third pad [is] comprised of a non-bioabsorbable substrate removable [*sic*] coupled to the second pad." (underlining added). Therefore, Johnson does not disclose or suggest, or rendered obvious, inter alia, the third absorbable portion of Claim 58 formed from a third material having a third rate of absorption of tissue into the third absorbable portion.

Claims 7, 12-13, 15, and 22-23:

The Examiner rejected Claims 7, 12-13, 15, and 22-23 under 35 U.S.C. 103(a) as being unpatentable over Zamierowski in view of Lockwood. Respectfully stated, Claims 7, 12-13, 15, and 22-23 are not unpatentable over Zamierowski in view of Lockwood because Lockwood does not overcome Zamierowski's failure to disclose or suggest all of the limitations set forth in the claims from which Claims 7, 12-13, 15, and 22-23 depend (described above), and because the additional patentable limitations set forth in Claims 7, 12-13, 15, and 22-23 and the limitations of the claims from they depend would not have been obvious to one of ordinary skill in the art in view of Zamierowski and Lockwood at the time of the inventions.

Application No.: 10/652,100
Filing Date: August 28, 2003

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In conclusion, Applicant respectfully submits that the pending claims as amended or otherwise are not anticipated by, or rendered obvious by, any of the references cited in the Office Action for the reasons stated herein or during the July 22, 2008 interview with the Examiner. Accordingly, the Applicant respectfully requests that the Examiner pass the pending claims to allowance. The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.


Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Application No.: 10/652,100
Filing Date: August 28, 2003

Respectfully submitted,

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